



Comments for: “Impacts of COVID-19 on Long-Term Care Facilities”

1) Thank you, Chairman Frank and members, for the opportunity to provide our perspective on the state’s response to the COVID-19 pandemic and its impact on assisted living providers and residents in Texas. My name is Carmen Tilton, and I am the Vice President of Public Policy for the Texas Assisted Living Association (TALA). Our organization represents assisted living providers in Texas, and our members are located throughout the state and in many of your districts.

TALA’s experiences with emergency regulations can be summed up with the following:

- Good overall effort from HHSC to keep stakeholders informed
- Emergency communication strategy needs to be put in place immediately
- HHSC needs to better utilize the input it solicits
- Need to have a global picture of resident health and well-being

In the six and a half months since COVID-19 first appeared in the United States, we have all learned a great deal about the nature of this novel virus— its transmissibility, which infection control protective efforts are effective against its spread, and the direct and indirect health impacts COVID-19 can have on the staff and residents in congregate care settings. As federal and state epidemiologists learned more about this novel virus, the state’s regulatory agency for health care, the Texas Health and Human Services Commission (HHSC), has modified both explicit regulatory language and guidance.

TALA wants to commend HHSC for significantly increasing its outreach to providers, families, and advocacy organizations such as the TALA. By that same token, however, the regulatory landscape for providers of assisted living services has shifted dramatically from one week to the next. Rules and guidance vary not just by jurisdiction but also by interpretation and methodology of communication. What is said in a verbal-only webinar may not exactly lineup with what is written in the accompanying documentation and is not reflected in the broader emergency rules located in the Texas Administrative Code.

This variation has led to frequent requests for clarification, on-the-ground missteps by both providers and state surveyors, and inappropriate expectations for residents and their families. Our providers are required to not just follow ever-evolving guidance from HHSC and their local health departments but also must watch for shifting policies and press releases coming from the Department of State Health Services, the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, and others. Monitoring so many critical sources of information and implementing and revising policies based on these sources causes confusion and is time-consuming for assisted living administrators who need to stay focused on resident



care. The blanket prohibition on visitation at the start of the pandemic and its recent partial easing illustrates the point.

In mid-March, HHSC published emergency rules §553.45 which prohibited all visitation to assisted living communities by any non-essential personnel¹. This prohibition, as interpreted by HHSC, included not just visitation into an assisted living community's building, but the grounds around the property and personal care services which were deemed not medically necessary. At the time, this blanket prohibition made sense and was needed. We were watching unfortunate illustrations in the state of Washington about the catastrophic impact of COVID-19 in long-term care settings.

By May, however, residents, their families, and staff were starting to show the stress and strain of prolonged isolation. At TALA, we received an increasing number of frantic phone calls from families begging to be allowed to see their residents in person, heartbreaking stories from staff about residents experiencing PTSD, depression, and acute anxiety, and questions from assisted living providers about the gray area between routine care appointments and the state's limited interpretation of services "necessary to ensure resident health and safety." TALA, along with the Texas Health Care Association and LeadingAge Texas, submitted a joint proposal to HHSC for a phased in approach to visitation which reflected a nuanced understanding of how COVID-19 transmitted from person to person. We received confirmation of receipt of the proposal but have had no further discussion about it or its contents.

Distressingly for families, national and local news would cover visitation-like events such as car parades happening at assisted living communities in other states, but Texas continued to ban these extremely low risk activities here. When pressed to give justification, HHSC pointed to a document, QSO-20-28, developed by Centers for Medicare & Medicaid specifically for nursing homes in April². Guidance prohibiting car parades and drive-by visits is not actually located within QSO-20-28 but as an interpretation of an answer in a secondary "Frequently Asked Questions" document attached to the first. The question asks about "outside activities" and excursions away from a building, and the answer prohibits "all group activities such as internal and external group activities." The challenge in this case is that not only is the guidance effectively buried in federal documents which are not applicable to assisted living providers, but the interpretation by HHSC expanded the visitation prohibition to include cars driving through a parking lot. For providers who knew to sign up for and listen to weekly webinars, questions about this activity were addressed, but the agency did not write down or publish the prohibition in a space which was easily accessible to the general public. Additionally, this type of outside activity continues to be prohibited for assisted living communities who have not applied for and received a Phase 1 Visitation Designation.

¹ <https://hhs.texas.gov/sites/default/files/documents/govdelivery/alf-emergency-rules.pdf>

² <https://www.cms.gov/files/document/qso-20-28-nh.pdf>



For many months, every request for flexibility, no matter how limited, was denied. Residents who could not communicate with loved ones via video conferencing technology or telephones were effectively cutoff from their families and friends. Residents who left for any reason were subjected to a fourteen-day quarantine upon return, no matter how long the appointment or how many precautions were adhered to. We heard reports from assisted living providers of families becoming increasingly irate and frustrated. We heard from several of our members about facilities who had to call local law enforcement, of family members breaking windows, and increasingly of residents leaving for “necessary medical appointments” and returning to the community after many hours with fresh haircuts, manicures, and having had lunch with family. The blanket prohibition on any form of monitored visitation strained relationships between assisted living providers and families and incentivized risky behavior.

In August, Governor Greg Abbott and HHSC announced a Phase 1 Visitation Designation process for assisted living communities. The related emergency rules, §553.2003, allowed eligible providers to apply for a Phase 1 designation, which would allow for structured outside visitation, car parades, and limited inside visitation³. Additionally, the rules allowed for compassionate care visits for residents diagnosed by a physician with “Failure to Thrive.”

As grateful as providers were to have some type of general visitation to offer residents, significant restrictions on the types and structure of the visits limited the ability of residents with auditory and visual impairments engage meaningfully with their families. The rules required at least six feet of separation, constant mask-wearing by visitors, and a prohibition on any touch between visitors and residents. Residents with Alzheimer’s or dementia may not adhere to distancing rules; they may not understand why their families must stay separated behind plexiglass barriers or outside of windows. Buildings without easy access to interior spaces away from communal resident areas such as apartment hallways, dining rooms, etc. cannot permit inside visitation, and sweltering August temperatures made outside visits unsafe for many.

On September 17th, Governor Abbott announced an expansion to the Phase 1 visitation rules, including the establishment of “essential caregivers” and the reintroduction of salon and cosmetic services inside assisted living communities. In the announcement, Gov. Abbott said that the rules would go into effect on Sept. 24th, but HHSC did not release even a draft or provisional version of the rule till the evening of the 22nd. By withholding rule text language, HHSC made it impossible for assisted living providers to implement a September 24th start date. Providers still don’t know what kind of infection control training will be required for essential caregivers, they don’t know if a resident will be able to change a designated essential caregiver, and they don’t know how surveyors are going to interpret the rules.

³<https://www.sos.texas.gov/texreg/archive/August212020/Emergency%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html>



Aside from the challenges of maintaining family and friend connections for residents. The repeated emphasis on “medically necessary” by HHSC and the Department of State Health Services has resulted in a significant decline in services aimed at restoring a resident’s emotional and spiritual health. Only in the past few weeks has clergy coming in to administer a resident’s last rites been explicitly permitted. Salon services, such as haircuts and cosmetic nail trims, had not been allowed for six full months prior to the release of the September 24th rules. On-site religious services in courtyards fall into a regulatory gray area, and leaving an assisted living community for drive through services and communion, as some churches have offered, results in a fourteen-day quarantine upon return. We are hearing from residents and their families that residents don’t feel like themselves; they don’t look like themselves; and the repeated hits to personal dignity have taken their toll.

As Texas continues to respond to the COVID-19 pandemic, the Texas Assisted Living Association and its members request the Human Services Committee to direct HHSC and the Department of State Health Services to recognize the importance of mental health and human connection. A consistent thread throughout the process of visitation prohibitions, policy development, and partial easing has been the continued prioritization of COVID risk minimization over a resident’s mental, emotional, and spiritual health. For months, no activity— no matter how small the risk and no matter how potentially great the positive impact to a resident’s quality of life— was permitted. Assisted living providers who were found extending any ambiguous flexibility to residents or their families were issued severe Immediate Threat citations coded as a deficiency in infection control policies.

Regulations, rules, formal and informal guidance are released by a cacophony of different sources and in different formats. One of our members had a state surveyor asking why the community was out of compliance with a “requirement” which had not yet been published by the agency. With so many governmental teams working on a COVID-19 pandemic response, direct care providers such as assisted living communities are on the receiving end of convoluted and contradictory information. At the same time, the lack of a single, responsible entity meant that providers had no avenue for communicating up problems or challenges and no seat at the table for the negotiation of any sort of fix. TALA had been communicating with HHSC for months about the crisis brewing due to the blanket visitation prohibitions. When asked why flexibility could not be allowed, fingers pointed to several other agencies and offices. When we reached out to representatives in those areas, they pointed at each other and back to HHSC. It created a picture of an insular bureaucratic process in which providers, families, and residents were repeatedly excluded and our concerns dismissed.

Recommendations

- TALA would like to see the creation of a stakeholder group for emergency response policies impacting long-term care facilities
 - The very providers who are tasked with implementation should have a say in how the rules are drafted and the expectations they will create.



- We'd like for HHSC to have a comprehensive strategy for emergency communication to providers. Administrators should not be expected to sift through GovDelivery announcements from six governmental agencies, to monitor Twitter for press releases, and to remember to register and block off time for weekly verbal-only webinars to stay current. And, we would like to see a renewed emphasis on holistic well-being in future policy development. The holidays are fast approaching, and we anticipate another period of heightened tensions and questions regarding visitation and trips out of buildings.

2) Regarding waived portions of the Texas Administrative Code due to the COVID-19 emergency, TALA recommends that the assisted living-specific provisions in Title 26, Chapter 553 of the Texas Administrative Code be reinstated once COVID has passed and the emergency ended. Having these administrative requirements waived during this crisis has been helpful, and we would hope to see a similar waiving of provisions the next time the industry is faced with a challenge of this scale and scope. For example, updating resident policies and providing residents with new copies as guidance from HHSC changed would have been wasteful and time-consuming. By waiving this requirement, assisted living providers were able to focus on compliance and staff training.

Waived provisions relating to the practice of nursing and medication aides could be considered for a more permanent removal from the Texas Administrative Code. Continuing to allow some NATCEP and Medication Aide Training Programs to utilize online learning may help students in medically underserved areas where hands-on programs are scarce. Additionally, allowing nursing students who have completed coursework to begin practicing as Certified Nurse Aides while awaiting their final exams would allow assisted living providers to recruit graduating nursing students more directly from nursing programs.

As much as TALA's members have appreciated the flexibilities offered by these waived provisions, many of these policies should return when the COVID emergency has passed.

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